REMARKS

Claims 1 and 3-24 are in the case and presented for consideration.

Since the Amendment submitted on October 25, 2005 did not advance the case, claims 1, 7, 14, 17, 18, and 22 have been reverted to their previous form to place them in better condition for appeal. No new search or consideration is required since the Office has already considered claims 1, 7, 14, 17, 18, and 22 in their presently amended form prior to issuing the September 13, 2005 Office Action. Entry of claims 1, 7, 14, 17, 18, and 22 is therefore respectfully requested.

<u>35 U.S.C. § 102</u>

Claims 1 and 3-23 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,758,257 to Herz, et al. ("Herz").

Claim 1 recites a step (or feature) of "partitioning a third party selection history into a plurality of clusters…" On page 3 (first paragraph) of the Office Action, the Office asserts that the partitioning step (or feature) is taught by Herz in col. 5, lines 24-54 and col. 49, lines 1-20.

The Office then mischaracterizes page 7, lines 16-20, of Applicant's specification. It is submitted that nowhere in the passage cited by the Office above, which is reproduced below in its entirety, does it mention or would cause one to draw the conclusion that "a partition is equivalent to a cluster", as the Office has done.

> The clustering process 500 partitions the third party viewing history 130 (the data set) into clusters, such that points (television programs) in one cluster are closer to the mean (centroid) of that cluster than any other cluster.

Instead, it is shown that *a cluster is a result of a partition*. Put differently,

clustering is a result, and not an equivalent of partitioning (emphasis added).

The Office Action continued that Herz teaches partitioning "the profiles of third party persons viewing history" (at col. 38, lines 1-55), and "combining the viewing profiles of two or more customers, with equal or unequal weightings, so that the video programming with content profiles strictly within the overlap area of the combined customer profiles will be preferred" (at col. 49, lines 1-20). See September 8, 2006 Office Action, page 3, first paragraph.

Applicant respectfully traverses the above ground of rejection.

It is submitted that the Herz reference does not disclose or suggest every feature specified in the pending claims.

As mentioned previously, the Office asserts that col. 5, lines 24-54, and col. 49, lines 1-20, of Herz teaches the partitioning step (or feature), which is in error.

According to col. 5, lines 24-28, of Herz, a customer may have multiple profiles for representing the customer's changing preferences at various times of the day and of the week.

The customer profile creating step may include "***clustering customer profiles*** for combinations of customers expected to view the video programs at a particular customer location at particular times on particular days." See Herz, col. 5, lines 33-37. As used in the context of Herz's invention, the term "***clustering***" is intended to mean ***combining the <u>appropriate ones of the individual customer profiles</u>*** of customers who are expected to view the video program at a particular time. Herz refers to the combined customer profiles as the "clustered profiles". See Herz, col. 5, line 37.

The Office mischaracterizes Applicant's specification as stating "a partition is equivalent to a cluster" in order to establish that the "clustering" technique used by Herz

is equivalent to the claimed "partitioning" step or feature. See September 8, 2006 Office Action, page 3, first paragraph. On the contrary, Applicant's disclosure only mentioned that clustering or clusters are a *result of a partition*, which would not lead one skilled in the art appraised of Herz's invention to employ the "clustering" (i.e., combining) technique to perform a partition, e.g., of the third party viewing history.

Continuing on to col. 5, lines 37-40, Herz illustrates by way of example how clustered profiles are created based on the time of day. Herz describes in the example a household with two clustered profiles: an *evening clustered profile* obtained by combining Mom and Dad's individual profiles, and an *afternoon clustered profile* obtained by combining the children's individual profiles. See Herz, col. 5, lines 37-40. In this particular example, the profiles that are selected are chosen based on the time of the day (i.e., evening or afternoon) and the individuals who are likely to watch video program at such time.

As can be seen from the above example, and the foregoing passages cited in the Office Action, Herz is *completely silent* with respect to *partitioning the selection history of any customer into clusters* (such as for example cluster C1 through C6 of a third party viewing history 130' as illustrated in Fig. 3 of this application). Thus, neither the individual profiles being combined with other profiles, nor the selection history which may be stored in the customer profiles, are partitioned in any way. Instead, *clustered profiles* are created by wholly combining selected individual profiles in accordance with, for example, the time of day that the *customers to whom the profiles are associated with are expected to watch some video programming together* (emphasis added). Also see Herz, col. 5, lines 33-37.

Therefore, the claimed invention cannot be anticipated because Herz is missing,

among other patentable features, *partitioning the third party selection history into a number of clusters.*

In addition, the Office Action cites col. 49, lines 1-6, of Herz, which discloses that a customer may adopt the profiles of other individuals or celebrities. However, this passage also does not mention partitioning the viewing history, whether belonging to another individual or to a celebrity, into sets of clusters (of the third party selection history) as required by the claim language. See, e.g., Applicant's claim 1, line 4.

The Office Action further cites col. 49, lines 11-18, of Herz, which describes that individual profiles are combined to form a "clustered profile" and that preference is given to programming "with content profiles strictly within the overlap area of the combined customer profiles" (Herz, col. 49, lines 14-16). This way, customers with very different preferences may be presented with video programmings which are mutually agreeable. See Herz, col. 49, lines 16-18. Yet, Herz still does not disclose or suggest partitioning the viewing history of a third party into sets of clusters. Therefore, Herz cannot possibly disclose or suggest the claimed invention.

The Examiner further cites col. 38, lines 1-55, of Herz as teaching "clustering (i.e., partitioning) the profiles of ***third party persons viewing history***..." However, it is respectfully maintained that, contrary to the Examiner's interpretation, the passages cited by the Examiner only teaches creating initial profiles for new customers based on the programs each person has watched. See Herz, col. 37, lines 64-67.

> [T]he customer profiles of new customers should look like
> the content profiles of the movies and/or shows they watch...
> [Herz, col. 38, lines 1-3]

Herz further states that the profile for a customer with a single profile can be determined by finding the "***centroid [or the average] of the content profiles of all the movies and shows watched by the customer***". This teaching is in direct contrast to the claimed invention because the claims call for partitioning the selection history of ***a third party*** into sets of clusters, ***not averaging the content profiles*** of all the movies and shows watched by the ***user***.

Furthermore, even if Herz teaches clustering of all of the movies or shows watched by a customer, it is only performed to determine the initial profile of the customer (Herz, col. 38, lines 38-12) so that customers who have watched more movies or shows in common can be placed in the same group (Herz, col. 38, lines 42-47).

Therefore, col. 38, lines 1-55, of Herz, only teaches creating the initial profile of customers, rather than partitioning the selection history of a third party into a plurality of clusters in the manner recited in the claims. Even if Herz teaches partitioning viewing history into clusters, Herz is still distinguished from the claimed invention because, unlike the claimed invention, clustering is used to group customers who have watched more movies or shows in common.

The Office Action further cites col. 49, lines 1-20, of Herz as teaching (1) "combining the viewing profiles of two or more customers, with equal or unequal weightings, so that the video programming with content profiles strictly within the overlap area of the combined customer profiles will be preferred"; and (2) "modifying a target user's history of selecting said one or more available items with one or more third party clusters to produce a modified target user's history." See September 8, 2006

Office Action, page 3, paragraphs 1 and 3.

As discussed previously, the claimed invention does not involved simply combining the profiles of two or more customers (Herz, col. 49, lines 12-13), but rather it involves modifying a user's selection history with the desired cluster(s) of a third party's selection history, after the third party selection history has been partitioned into a set of clusters that are similar to one another in some way (irrespective of the number of profiles). See, e.g., specification, page 3, lines 17-19.

Accordingly, for the reasons discussed above, the claims do not read on the teachings of the Herz reference. Reconsideration and withdrawal of this rejection and allowance of claims 1, 14, 17, 22 and 23 is respectfully requested.

Claims 3-6 depend from claim 1 and therefore contain the features recited in claim 1 and are believed to be in condition for allowance for at least the same reasons given for claim 1 above. Accordingly, reconsideration and withdrawal of the rejection to claims 3-6 is respectfully requested.

Claims 7 and 18 recite similar subject matter as claim 1 and therefore contain the features recited in claim 1 and are believed to be in condition for allowance for at least the same reasons given for claim 1 above. Accordingly, reconsideration and withdrawal of the rejection to claims 7 and 18 is respectfully requested.

Claims 8-13, 15-16 and 19-21 depend from independent claims 7, 14 and 18, respectively, and therefore contain the features recited in claim 7, 14 and 18 and are believed to be in condition for allowance for at least the same reasons given for claims 7, 14 and 18 above. Accordingly, withdrawal of the rejection to claims 8-13, 15-16 and 19-21 is respectfully requested.

Accordingly, the application and claims are believed to be in condition for allowance, and favorable action is respectfully requested. No new matter has been added.

If any issues remain, the Examiner is respectfully invited to contact the undersigned at the number below to advance the application to allowance.

Respectfully submitted,

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